

(e) *Transcript.* Copies of the transcript of the hearing may be obtained by the parties upon written application filed with the reporter and payment of fees at the rate provided in the agreement with the reporter.

§ 44.31 Proposed findings of fact, conclusions, and orders.

After consultation with the parties, the administrative law judge may prescribe a time period of 30 days within which each party may file proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such time may be expedited or extended upon request and at the discretion of the Administrative Law Judge. Proposals and briefs shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

[55 FR 53442, Dec. 28, 1990]

§ 44.32 Initial decision.

(a) Within 60 days after the time allowed for the filing of proposed findings of fact and conclusions of law, the administrative law judge shall make and serve upon each party a decision, which shall become final upon the 30th day after service thereof, unless an appeal is filed as provided in § 44.33 of this part. After consultation with the parties, the administrative law judge may expedite or extend the time for issuing the decision. The decision of the administrative law judge shall include:

(1) A statement of findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact, law, or discretion presented on the record; and

(2) The appropriate rule, order, relief, or denial thereof.

(b) The decision of the administrative law judge shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.33 Departmental review.

(a) *Notice of appeal.* Any party may appeal from the initial decision of the administrative law judge by filing with the Assistant Secretary a notice of appeal within 30 days after service of the initial decision. The Assistant Secretary may consolidate related appeals. Copies of a notice of appeal shall be served on all parties to the proceeding in accordance with § 44.6 of this part.

(b) *Statement of objections.* Within 20 days after filing the notice of appeal, the appellant shall file his statement of objections to the decision of the administrative law judge and serve copies on all other parties to the proceeding. The statement shall refer to the specific findings of fact, conclusions of law, or terms of the order objected to in the initial decision. Where any objection is based upon evidence of record, the objection need not be considered by the Assistant Secretary if specific record citations to the pertinent evidence are not contained in the statement of objections.

(c) *Responding statements.* Within 20 days after service of the statement of objections, any other party to the proceeding may file a statement in response.

[43 FR 29518, July 7, 1978, as amended at 55 FR 53442, Dec. 28, 1990]

§ 44.34 Transmission of record.

If an appeal is filed, the administrative law judge shall, as soon thereafter as is practicable, transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the petition; the MSHA investigation report; any request for hearing on the petition; the transcript of testimony taken at the hearing, together with exhibits admitted in evidence; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed; and the administrative law judge's decision.

[55 FR 53442, Dec. 28, 1990]